

OREGON GOVERNMENT ETHICS COMMISSION

PRELIMINARY REVIEW

CASE NO: 12-188EDT

DATE: January 7, 2013

RESPONDENT: HANDY, Rob, Lane County Commissioner and candidate for Lane County Commissioner

COMPLAINANT: Thayer, Alan J.

RECOMMENDED ACTION: Move to Investigate Possible Violations of ORS 244.025(1) and 244.040(1)

SYNOPSIS: Rob Handy was a Lane County Commissioner and a candidate for reelection to the Lane County Board of Commissioners during the period of time relevant to this preliminary review. The complainant alleged that Commissioner Handy may have violated Oregon Government Ethics law by using, or attempting to use, his position to gain prohibited financial benefits and may have solicited or received prohibited gifts.

Information available for this preliminary review indicated that Commissioner Handy may have solicited or received prohibited gifts. Based on information provided for this preliminary review, it appears an investigation is warranted to determine if violations of Oregon Government Ethics law may have occurred.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed herein:

244.020(4) “ ‘Candidate’ means an individual for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is printed on a ballot or is expected to be or has been presented, with the individual’s consent, for nomination or election to public office.”

244.020(6)(a) “ ‘Gift’ means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials or candidates.”

244.020(6)(b) “ ‘Gift’ does not mean:

(A) Contributions as defined in ORS 260.005.”

244.020(9) “ ‘Legislative or administrative interest’ means an economic interest, distinct from that of the general public, in:

(a) Any matter subject to the decision or vote of the public official acting in the public official’s capacity as a public official; or

(b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official.”

1 244.020(14) " 'Public official' means any person who, when an alleged violation of this
2 chapter occurs, is serving the State of Oregon or any of its political subdivisions or any
3 other public body as defined in ORS 174.109 as an elected official, appointed official,
4 employee or agent, irrespective of whether the person is compensated for the
5 services."

6
7 **244.025 "Gift limit.** (1) During a calendar year, a public official, a candidate or a
8 relative or member of the household of the public official or candidate may not solicit or
9 receive, directly or indirectly, any gift or gifts with an aggregate value in excess of \$50
10 from any single source that could reasonably be known to have a legislative or
11 administrative interest."

12
13 **244.040 "Prohibited use of official position or office; exceptions; other prohibited**
14 **actions.** (1) Except as provided in subsection (2) of this section, a public official may
15 not use or attempt to use official position or office to obtain financial gain or avoidance
16 of financial detriment for the public official, a relative or member of the household of
17 the public official, or any business with which the public official or a relative or member
18 of the household of the public official is associated, if the financial gain or avoidance of
19 financial detriment would not otherwise be available but for the public official's holding
20 of the official position or office."

21
22 244.040(2) "Subsection (1) of this section does not apply to:

23
24 (a) Any part of an official compensation package as determined by the public
25 body that the public official serves.

26
27 (b) The receipt by a public official or a relative or member of the household of
28 the public official of an honorarium or any other item allowed under ORS
29 244.042.

30
31 (c) Reimbursement of expenses.

1 (d) An unsolicited award for professional achievement.

2
3 (e) Gifts that do not exceed the limits specified in ORS 244.025 received by a
4 public official or a relative or member of the household of the public official from
5 a source that could reasonably be known to have a legislative or administrative
6 interest.

7
8 (f) Gifts received by a public official or a relative or member of the household of
9 the public official from a source that could not reasonably be known to have a
10 legislative or administrative interest.

11
12 (g) The receipt by a public official or a relative or member of the household of
13 the public official of any item, regardless of value, that is expressly excluded
14 from the definition of "gift" in ORS 244.020.

15
16 (h) Contributions made to a legal expense trust fund established under ORS
17 244.209 for the benefit of the public official."

18
19 The following Oregon Administrative Rules are applicable to the issues addressed herein:

20
21 199-005-0003(1) "If the source of a gift has a legislative or administrative interest, any
22 gift offered to a public official or candidate, a relative or member of a public official's or
23 candidate's household, may only be offered and accepted under conditions set forth as
24 permitted in ORS Chapter 244. If, however, the source of a gift does not have a
25 legislative or administrative interest, gifts are not restricted or prohibited."

26
27 199-005-0003(2) " 'Decision' as used in ORS 244.020(9)(a) and (b) means an act that
28 commits the public body to a particular course of action within the public official's
29 scope of authority and that is connected to the source's economic interest. A decision
30 is not a recommendation or work performed in an advisory capacity. The following
31 examples illustrate the types of acts that are considered to be 'decisions':

1 (a) An employee makes a decision when issuing or denying a permit.

2
3 (b) An enforcement employee makes decisions on whether to cite, warn or
4 arrest.

5
6 (c) An employee who approves contracts makes a decision on a contract.

7
8 (d) An employee who commits their public body's funds for goods and services,
9 such as office supplies, makes a decision.

10
11 (e) Should a chief executive officer, director or manager with authority to make
12 a final decision on a matter delegate the decision to a subordinate, the chief
13 executive officer, director or manager would retain responsibility as the final
14 decision maker. The subordinate has also made a decision."

15
16 199-005-0030(1) "If ORS 244.025 and 244.040(2)(e) limit the offering and receipt of
17 gifts from sources that could reasonably be known to have a legislative or
18 administrative interest in the vote or decision of the public official who holds any official
19 position or office. This rule is intended to clarify how a public official determines who
20 the source of the gift is. Public officials need to be aware of the source of any gifts
21 they receive (or those that are received by their relatives or members of their
22 household), regardless of amount, to make sure that they comply with the \$50 limit on
23 gifts from a single source in a calendar year. To that end, public officials should not
24 accept gifts in any amount without obtaining information from the person or entity
25 offering the gift as to who is the source of the gift. It is the public official's personal
26 responsibility to ensure that no single source provides gifts exceeding an aggregate
27 value of \$50 in a calendar year, if the source has a legislative or administrative
28 interest."

29
30 199-005-0030(2) "The source of any gift provided to a public official is the ultimate
31 payer(s) of the expense."

1 199-005-0035(3) "An 'official compensation package' means the wages or other
2 benefits provided to the public official. To be part of the public official's 'official
3 compensation package', the wages and benefits must have been specifically approved
4 by the public body in a formal manner, such as through a union contract, an
5 employment contract, or other adopted personnel policies that apply generally to
6 employees or other public officials. 'Official compensation package' also includes the
7 direct payment of a public official's expenses by the public body, in accordance with
8 the public body's policies."

9
10 199-005-0035(4) "As used in ORS 244.040(2)(c), 'reimbursement of expenses' means
11 the payment by a public body to a public official serving that public body, of expenses
12 incurred in the conduct of official duties on behalf of the public body. Any such
13 repayment must comply with any applicable laws and policies governing the eligibility
14 of such repayment. Expenses paid by the public body to their own public officials need
15 not be reported by the public official under ORS 244.060."

16
17 **PRELIMINARY REVIEW:** The Oregon Government Ethics Commission (Commission)
18 received a signed complaint from Alan J. Thayer on 9/10/12 (#PR1 through #PR9). Mr.
19 Thayer alleged that Rob Handy, Lane County Commissioner and a candidate for reelection to
20 the Lane County Board of Commissioners, may have violated Oregon Government Ethics law
21 by using, or attempting to use his position to gain prohibited financial benefits and may have
22 solicited or received prohibited gifts. Receipt of the complaint was acknowledged in letters to
23 Mr. Thayer and Mr. Handy, who was also provided copies of the information received in the
24 complaint. The parties were invited to provide any information, which would assist the
25 Commission in conducting the preliminary review in this matter.

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BACKGROUND

Information indicates that on 4/12/11, Rob Handy, while serving as an elected Lane County Commissioner, was ordered personally liable to Lane County in the amount of \$20,000 for his role in violating Oregon Public Meetings law as set forth in ORS 192.610 to 192.690. It appears Lane County established an account to administer the collection of Mr. Handy's debt including the automatic deduction of funds from wages paid by Lane County to Commissioner Handy (#PR9 and #PR11).

Mr. Thayer made a number of allegations, two of which appeared to be within the jurisdiction of the Oregon Government Ethics Commission (Commission). The following is a summary of information provided by Mr. Thayer during this preliminary review that is relevant to the alleged violations of Oregon Government Ethics law:

Mr. Thayer indicated that his client, John H. Brown, received requests from Mr. Handy in the spring of 2012 for a \$3,000 payment to Lane County for Mr. Handy's personal benefit. Further, Mr. Thayer indicated Lane County received payments from others for Mr. Handy's personal financial benefit (#PR3).

Mr. Thayer indicated that he believes Mr. Handy may have violated Oregon Government Ethics law while soliciting or receiving prohibited financial benefits and may have solicited or received prohibited gifts. Specifically, Mr. Thayer indicated he believes Mr. Handy may have used or attempted to use his official position or office to obtain financial gain or avoid financial detriment that would not otherwise be available but for Mr. Handy's holding of his official position as prohibited by ORS 244.040(1) and may have solicited or received gifts exceeding \$50 from sources that could reasonably be known to have had a legislative or administrative interest as prohibited by ORS 244.025 (#PR2 and #PR3).

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1 Mr. Thayer provided a copy of an undated, handwritten letter apparently sent by Mr.
2 Handy to Mr. Brown in spring 2012. The letter indicated the following (#PR4):

3
4 "John

5
6 Thanks for considering making a contribution to my reelection campaign.

7
8 Most of all, thanks for considering my request to pay off 3,000.00 of my debt to
9 Lane County, incurred in public service – that became a 20,000.00 settlement
10 ramification for the unfair result of the lawsuit.

11
12 As you may recall from any talk, this is a personal debt I owe Lane County. It's
13 not subject to campaign reporting guidelines. Thus, you can make a donation
14 confidentially and anonymously if you like. You can make out a cashiers (sic)
15 check and make it/drop it off at Lane County – or send it to me at my home
16 address, and I can take it down there and submit it anonymously.

17
18 My home mailing address is

19
20 →
21 Eugene OR 97404→

22
23 Or if you prefer I come by and pick up a check, that is good, too.

24
25 Here's the particulars (sic) on what a check to help pay off my debt would
26 include:

27
28 Payable to: Lane County

29 →Accounts Receivable

30 Reference: ARO497 to Rob Handy

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1 John, thanks with your kindness and help with this. My family and I knew we
2 would be making sacrifices for me to serve in this position, and I knew and
3 understood that I would absorb constant pounding and criticism – but this
4 personal debt due to political decisions not to appeal the lawsuit, has been a bit
5 much!

6
7 Thanks, John, and let me know if there is any other info. I can provide.
8

9 Rob
10 ”
11

12 Mr. Thayer also provided copies of a portion of records enumerating payments made
13 to the account apparently established by Lane County to administer the collection of
14 Mr. Handy's debt which are summarized or excerpted below (#PR5 through #PR8):
15

16 “Accounts Receivable at 4/24/2012

17 Commissioner Rob Handy
18

19	2011-05-03	20,000.00	Beginning balance
20	2011-05-06	(250.00)	Payroll deduction
21	2011-05-09	(1,000.00)	Rob Handy down payment
22	2011-05-20	(250.00)	Payroll deduction
23	2011-06-03	(250.00)	Payroll deduction
24	2011-06-17	(250.00)	Payroll deduction
25	2011-07-05	(250.00)	Payroll deduction
26	2011-07-15	(250.00)	Payroll deduction
27	2011-08-26	(250.00)	Payroll deduction
28	2011-08-26	(250.00)	Payroll deduction
29	2011-08-26	(20.00)	Citizen
30	2011-09-16	(250.00)	Payroll deduction
31	2011-09-30	(250.00)	Payroll deduction

1	2011-10-07	(250.00)	Payroll deduction
2	2011-10-28	(250.00)	Payroll deduction
3	2011-11-10	(250.00)	Payroll deduction
4	2011-11-23	(250.00)	Payroll deduction
5	2011-12-09	(250.00)	Payroll deduction
6	2011-12-16	(250.00)	Payroll deduction
7	2012-01-13	(250.00)	Payroll deduction
8	2012-02-02	(250.00)	Payroll deduction
9	2012-03-09	(250.00)	Payroll deduction
10	2012-03-15	(2,000.00)	Citizen
11	2012-03-23	(250.00)	Payroll deduction
12	2012-04-06	(250.00)	Payroll deduction
13	2012-04-18	(1,000.00)	Citizen
14	2012-04-24	<u>(250.00)</u>	Payroll deduction
15		<u>10,480.00"</u>	

16

- 17 • A copy of an illegible receipt apparently issued by Lane County with the
- 18 notation, "Donation to Handy. Deposited 8/26/11."
- 19 • A copy of the front of a check #2208 apparently issued by Tom
- 20 Bowerman to Lane County Act Receivable Rob Handy A40497 in the
- 21 amount of \$2,000.00, dated 3/7/12.
- 22 • A copy of a receipt apparently issued by Lane County to Kristine and
- 23 Tom Bowerman on 3/14/12 for a \$2,000 payment "RE: Rob Handy" with
- 24 the notation, "3/15/2012 2,000 – Payment."
- 25 • A copy of the front of a check #3292 apparently issued by John V. Allcott
- 26 III, M.D. to Lane County Accounts Payable in the amount of \$1,000.00,
- 27 dated 4/18/12, with the notation, "To Rob Handy reference ARO 497."
- 28 • A copy of an undated receipt apparently issued by Lane County to John
- 29 Allcott III, M.D. for a \$1,000 payment for "Rob Handy AIR 0497."

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1 Mr. Thayer provided a copy of a letter dated 5/2/12 from Mr. Thayer to Commissioner
2 Handy. The letter indicated the following as excerpted below (#PR3):
3

- 4 • Mr. Thayer explained, "You recently sent a letter to John H. Brown
5 requesting a campaign contribution or a \$3,000 payment to Lane County
6 for your personal benefit. This caused Mr. Brown concern. He has
7 asked me to represent him in connection with your request."
- 8 • Mr. Thayer indicated, "Your letter asks Mr. Brown to make a \$3,000
9 payment to Lane County for the purpose of paying a 'personal debt' to
10 Lane County that you 'incurred in public service.' The letter
11 characterizes your personal debt to Lane County as a sacrifice resulting
12 from service in your official position. In addition, your letter is timed in
13 close proximity to an upcoming election and simultaneously requests a
14 contribution to your 'reelection campaign' – further emphasizing the
15 connection between your request and your status and power as a public
16 official."
- 17 • Mr. Thayer continued, "Oregon ethics law prohibits public official from
18 using or attempting to use their official positions for private financial gain
19 or avoidance of financial detriment. You are required to comply with
20 Oregon's ethics laws because you are a public official and a candidate
21 for public office."
- 22 • Mr. Thayer wrote, "By seeking a personal financial benefit, and explicitly
23 and implicitly connecting your request for this financial benefit to your
24 official position, it appears you are seeking to use your official position to
25 obtain financial benefits that would not otherwise be available.
26 Therefore, it is my opinion that your letter violates ORS 244.040(1)."
- 27 • Mr. Thayer continued, "...Lane County has received other payments for
28 your personal benefit, which are similar in nature to the \$3,000 payment
29 you requested from Mr. Brown. This information indicates that additional
30 investigation is warranted to determine whether you have committed
31 other violations of ORS 244.040(1)."

- 1 • Mr. Thayer explained, “In my opinion, you have also violated the \$50 gift
2 limitation of ORS 244.025 by sending Mr. Brown a letter soliciting a
3 \$3,000 gift. Oregon ethics law prohibits public officials and candidates
4 from soliciting or receiving gifts exceeding \$50 from any source that
5 could reasonably be known to have a legislative or administrative
6 interest. Your letter appears to violate this prohibition.”
- 7 • Mr. Thayer continued, “Your letter to Mr. Brown solicits a ‘gift’ within the
8 meaning of ORS 244.020(6)(a). The letter requests a \$3,000 payment
9 without consideration of equivalent value being provided in return. In
10 addition, it is clear from the circumstances that the requested \$3,000
11 payment would be exclusively for your personal benefit and would not be
12 made available to other persons who are not public officials on the same
13 terms or conditions. Finally, it does not appear that any of the
14 exceptions to the general definition of gift, which are set forth in ORS
15 244.020(6)(b), are applicable or serve to remove the payment you
16 solicited from the general definition of ‘gift’ set out above. Therefore, it
17 appears appropriate to conclude that your letter solicits a ‘gift’ within the
18 meaning of ORS 255.020(6)(a) (sic).”
- 19 • Mr. Thayer wrote, “It is also appropriate to conclude that your letter
20 solicits a gift in excess of \$50 from a person who may ‘reasonably be
21 known to have a legislative or administrative interest.’ ORS 244.025(1)
22 and ORS 244.020(9). As a prominent local realtor, Mr. Brown appears
23 before the Lane County Board of Commissioners on a variety of matters
24 that impact his financial interests and those of his clients. In fact, Mr.
25 Brown testified before the Lane County Board of Commissioners
26 regarding real property tax matters as recently as May 18, 2011. You
27 attended that meeting. Therefore, it is appropriate to conclude that you
28 are aware that Mr. Brown has legislative or administrative interests
29 distinct from the general public in matters coming before the Lane
30 County Board of Commissioners.”

31 ///

- Mr. Thayer explained, "In my opinion, you have violated the \$50 gift limitation of ORS 244.025 by sending Mr. Brown a letter soliciting a \$3,000 gift. In addition, the information attached as **Exhibit B** indicates that Lane County has recently received a \$1,000 payment and \$2,000 payment for your benefit from persons other than Mr. Brown. As these two payments are similar in nature to the payment you requested from Mr. Brown, it appears that investigation by the Oregon Government Ethics Commission is warranted to determine whether these two payments violate the \$50 gift limit of ORS 244.025."

I reviewed the license registry maintained by the Oregon Real Estate Agency and found that Mr. Brown is a licensed broker affiliated with Evans, Elder & Brown, Inc. The address provided for Mr. Brown is located in Eugene, Oregon (#PR12).

I reviewed the business registry maintained by the Secretary of State and found the following information which is summarized as follows (#PR13 through #PR16):

- "Evans, Elder & Brown, Inc." is registered as domestic business corporation. The principal place of business is identified as being located in Eugene, Oregon.
- Mr. Brown is registered as the president and secretary of a domestic business corporation named, "John H. Brown, Inc." The principal place of business is identified as being located in Eugene, Oregon.
- Mr. Brown is registered as a manager of a domestic limited liability company named, "Silva Management Company, LLC." The principal place of business is identified as being located in Eugene, Oregon."
- Mr. Bowerman is registered as the president of a domestic business corporation named, "Farmers' Union, inc." The previous business entity name registered was "Banana Warehouse, Inc." The principal place of business is identified as being located in Eugene, Oregon.

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- 1 • Mr. Bowerman is registered as the authorized representative of the assumed
2 business name "Policyinteractive." The principal place of business is identified
3 as being located in Eugene, Oregon.
- 4 • Mr. Bowerman is registered as a member of the domestic limited liability
5 company named, "The Green Store LLC." The principal place of business is
6 identified as being located in Eugene, Oregon.
- 7 • Dr. Allcott is registered as a partner of the domestic limited liability partnership
8 named, "Applegate Medical Associates, LLP." The principal place of business
9 is identified as being located in Veneta, Oregon.
- 10 • Dr. Allcott is registered as the authorized representative and registrant of the
11 assumed business name, "Applegate Medical Associates-East" The principal
12 place of business is identified as being located in Eugene, Oregon.

13
14 In a letter dated 9/5/12, Andrew D. Campbell, a Senior Assistant Attorney General for the
15 Criminal Justice Division of the Oregon Department of Justice, wrote to Alex R. Gardner, Lane
16 County District Attorney, "You forwarded a citizen complaint and asked the Oregon
17 Department of Justice (DOJ) to review the conduct of Lane County Commissioner Rob Handy
18 in connection with his solicitation of several individuals to pay down a personal debt. We sent
19 agents to Eugene who interviewed all involved parties, including Handy, and collected
20 evidence. We have determined that insufficient evidence exists to prove that Handy violated
21 any criminal laws." The letter included the following "Summary of Facts" (#PR11):

22
23 "Rob Handy currently serves as an elected Lane County Commissioner; his term
24 having begun January 5, 2009. On April 12, 2011, Handy was ordered personally
25 liable to Lane County in the amount of \$20,000 for his role in violating public meetings
26 laws. In order to collect this money award, Lane County arranged for an account to
27 automatically deduct funds from each of Handy's county commissioner paychecks: this
28 account is known as AR #0497.

29
30 In early 2012, Handy was engaged in a contested primary race to retain his seat as
31 Lane County Commissioner. Sometime in mid-February 2012 Handy contacted John

1 Brown, whom he knew from Brown's work as the vice president of the Eugene Water
2 and Electric board. Brown was also well known in Eugene as a real estate developer.
3 Shortly thereafter, at Handy's request, Brown and Handy met at a coffee shop in
4 Eugene.

5
6 At this meeting Handy asked Brown to contribute an unknown amount to Handy's re-
7 election campaign. Also at this meeting, Handy asked Brown to contribute \$5,000 to
8 Handy personally, by depositing money directly into AR #0497; thereby greatly
9 reducing Handy's personal financial obligation to Lane County. Brown requested that
10 Handy reduce the solicitation to writing for his consideration. Shortly thereafter, Handy
11 sent Brown a handwritten letter on plain notebook-style paper reiterating the
12 solicitation. The letter begins:

13
14 Thanks for considering making a contribution to my reelection campaign. Most
15 of all, thanks for considering my request to pay off \$3,000 of my debt to Lane
16 County incurred in public service – that became a 20,000.00 settlement
17 ramification for the unfair result of the lawsuit.

18
19 On May 3, 2012 DOJ special agents interviewed Handy with his lawyer present.
20 Handy admitted to the events summarized above. The agents expressly inquired
21 whether Handy has any relationship with Brown whereby 'their decisions or actions as
22 elected officials could have a direct effect on one another's business or community
23 concerns.' Handy answered in the negative.

24
25 Information subsequently obtained by DOJ indicated that Handy and Brown worked
26 together on preserving the McKenzie River and other water quality issues.
27 Additionally, the agents noted a voicemail to Brown from Handy wherein Handy told
28 Brown that he desired a 'unified front' regarding 'water related issues.'

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1 On June 5, 2012, DOJ agents re-interviewed Handy to see why he kept this
2 information from them, despite their questions about this relationship with Brown. At
3 that interview the agents noted that Handy appeared confused about the word
4 'business.'

5
6 The letter continued, "In analyzing this case, we must determine whether there is sufficient
7 evidence to prove, beyond a reasonable doubt, that Rob Handy committed any crime. In
8 particular, we focused on Official Misconduct pursuant to ORS 162.405 and 162.415." The
9 letter indicated that it was determined there was insufficient evidence to meet the threshold of
10 the aforementioned statutes. Specifically, the letter indicated the state had to prove beyond a
11 reasonable doubt that a person accused of Official Misconduct was acting in his or her official
12 capacity during the relevant conduct. The letter explained, "Without evidence that a person
13 was acting in their official capacity at the time of the alleged misconduct, a person cannot be
14 held criminally liable for the crime of Official Misconduct" (#PR11).

15
16 The letter explained, "For these reasons we have determined that there is insufficient
17 evidence to prove beyond a reasonable doubt that Handy committed Official Misconduct.
18 Similarly, we found insufficient evidence to prove beyond a reasonable doubt that Handy
19 committed any other crime. While his conduct may have violated personnel policies and
20 ethics rules, it does not meet the criteria for criminal prosecution" (#PR11).

21
22 A footnote at the end of the letter stated, "There is a suggestion Handy violated ORS 244.025
23 by soliciting a gift valued at more than \$50. However, even if this statute relates to the office
24 of County Commissioner, there is insufficient evidence the person he solicited had a
25 'legislative or administrative interest' as that term is defined by Oregon law" (#PR11).

26
27 Marianne Dugan and Brian L. Michaels, who are representing Mr. Handy in this matter,
28 provided a response in a letter dated 10/16/12. A copy of that letter will be provided to the
29 Commission with this preliminary review report. The following is a summary of Mr. Michaels'
30 letter (#PR10):

31 ///

1 Mr. Michaels explained, "As an initial matter, it is worthy of note the moneys alluded by
2 Mr. Thayer were not campaign contributions as characterized by the first sentence of
3 Mr. Thayer's letter. Nor were they for personal benefit. All moneys references by Mr.
4 Thayer's Complaint were deposited into an account established by Lane County for
5 Lane County. Mr. Handy did not request or participate in the decision to create such
6 an account, nor did he personally receive any money from the account. He was
7 merely following what had become a Lane County procedure."
8

9 Mr. Michaels reasoned, "The financial gain would have been available even if Mr.
10 Handy no longer held the official position or office – meaning they are not 'gifts' – ORS
11 244.020(6)(a). To be disallowed they have to be something 'which is not extended to
12 others who are not public official or candidates...on the same terms and conditions.'
13 Mr. Handy would have approached these donors after he was no longer an official or
14 candidate but merely an ex-official with a debt related to his public service, and they
15 are therefore not 'gifts.'
16

17 Mr. Michaels continued, "Even if these donations are 'gifts' that does not mean Mr.
18 Handy violated ORS 244.040(1). Under any of the following strong arguments, the
19 statute does not apply:
20

- 21 a) Mr. Handy did not 'use' his 'official position or office' in any way in
22 garnering the donations.
- 23 b) The donations fall under the exception for 'Gifts...from a source that
24 could not reasonably be known to have a legislative or administrative
25 interest.' ORS 244.040(2)(f). It was not reasonable for Mr. Handy to
26 think that John Brown, or three citizens who donated, had any 'economic
27 interest distinct from the general public' in any matter that was subject to
28 his foreseeable future votes. ORS 244.020(9) (defining 'legislative or
29 administrative interest').
- 30 c) The donations fall under the exception to ORS 244.040 for
31 'reimbursement of expenses.' ORS 244.040(2)(c)."

1 Mr. Michaels also indicated, "...ORS 260.407(1) reveals that any funds donated to a
2 public office holder may be used to defray expenses incurred in connection with the
3 official's duties as holder of the public office – which certainly include Mr. Handy's debt
4 to the County."

5
6 **CONCLUSIONS:** Rob Handy was a Lane County Commissioner and a candidate for
7 reelection to the Lane County Board of Commissioners during the period of time relevant to
8 this preliminary review. Mr. Handy was a public official as defined in ORS 244.020(14) and a
9 candidate as defined in ORS 244.020(4).

10
11 As a public official and a candidate, ORS 244.025(1) prohibited Commissioner Handy from
12 soliciting or receiving, directly or indirectly, any gift or gifts with an aggregate value in excess
13 of \$50 from any single source that could reasonably be known to have a legislative or
14 administrative interest.

15
16 As defined in ORS 244.020(6)(a), a gift is something of economic value given to a public
17 official without valuable consideration of equivalent value, including the full or partial
18 forgiveness of indebtedness, which is not extended to others who are not public officials on
19 the same terms and conditions or for valuable consideration less than that required from
20 others who are not public officials.

21
22 As defined in ORS 244.020(9), a legislative or administrative interest is an economic interest,
23 distinct from an economic interest held by the general public, in matters subject to the
24 decision or vote of each individual public official.

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Commissioner Handy, apparently, was personally liable to Lane County in the amount of \$20,000 for his role in violating Oregon Public Meetings law as set forth in ORS 192.610 to 192.690. Information indicated Commissioner Handy may have solicited or received gifts in excess of \$50 during the period of time relevant to this preliminary review. It appears the sources Commissioner Handy solicited or received gifts in excess of \$50 from may have had a legislative or administrative interest in matters subject to Commissioner Handy's decision or vote or matters that would be subject to Commissioner Handy's decision or vote. The alleged gifts an investigation authorized by the Commission would focus on would include those discussed in this preliminary review report that may have been solicited or received from John H. Brown; Kristine or Tom Bowerman; and John V. Allcott III, M.D.

As a public official, ORS 244.040(1) prohibited Commissioner Handy from using or attempting to use his official position to obtain a financial benefit or to avoid a personal expense through an opportunity that would not otherwise be available but for holding his position as a county commissioner.

There are some exceptions to financial benefits prohibited by ORS 244.040(1). Among those exceptions, ORS 244.040(1) does not apply to the following:

- Any part of an official compensation package as determined by the public body that the public official serves [ORS 244.040(2)(a)].
- Reimbursement of expenses, by a public body to a public official serving that public body, of expenses incurred by the public official in the conduct of official duties [ORS 244.040(2)(c)].
- The receipt by a public official of any item, regardless of value, that is expressly excluded from the definition of a gift in ORS 244.020 [ORS 244.040(2)(g); ORS 244.020(6)(b)(A) through (P)].

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- Gifts that do not exceed the limits specified in ORS 244.025 received by a public official from a source that could reasonably be known to have a legislative or administrative interest [ORS 244.040(2)(e)].
- Gifts received by a public official from a source that could not reasonably be known to have a legislative or administrative interest [ORS 244.040(2)(f)].

It is unclear if Commissioner Handy used or attempted to use his official position for prohibited financial benefits; however, if the Commission moves this matter to investigation it would be necessary to clarify these circumstances.

It should be noted that the Oregon Government Ethics Commission has the sole responsibility to interpret and enforce Oregon Government Ethics law. It should be clearly understood that interpretations provided by any other party are not binding on the Oregon Government Ethics Commission.

There appears to be a substantial objective basis to believe that violations of Oregon Government Ethics law may have occurred and that Commissioner Handy may have committed such violations.

RECOMMENDATIONS: The Oregon Government Ethics Commission should move to investigate whether Rob Handy may have violated ORS 244.025(1) and 244.040(1) (Motion 4).

ASSOCIATED DOCUMENTS:

- #PR1 Copy of selected pages from electronic mail communications of Alan J. Thayer and staff of the Oregon Government Ethics Commission dated 5/2/12, 5/8/12, 9/10/12 and 9/11/12.
- #PR2 Alan J. Thayer, signed complaint received on 9/11/12.
- #PR3 Copy of a letter from Alan J. Thayer, Jr. to Rob Handy, Lane County Commissioner dated 5/2/12.

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1 #PR4 Copy of an undated, handwritten letter apparently sent by Rob Handy to John
2 H. Brown.
3 #PR5 Copy of a record titled, "Accounts Receivable at 4/24/2012 Commissioner Rob
4 Handy."
5 #PR6 Copy of an illegible receipt from Lane County with the notation "Donation to
6 Handy. Deposited 8/26/11."
7 #PR7 Copy of a receipt apparently issued by Lane County to Kristine and Tom
8 Bowerman on 3/14/12 and a copy of the front of Kristine and Tom Bowerman
9 check number 2208 to Lane County Act Receivable Rob Handy A0497 dated
10 3/7/12.
11 #PR8 Copy of the front of John V. Allcott III, M.D. check number 3292 to Lane County
12 Accounts Payable dated 4/18/12 and a copy of an undated receipt apparently
13 issued by Lane County to John Allcott III, M.D.
14 #PR9 Copy of a Stipulated General Judgment filed in the Circuit Court of the State of
15 Oregon for the County of Lane dated 4/12/11.
16 #PR10 Marianne Dugan and Brian L. Michaels letter to Ronald A. Bersin dated
17 10/16/12 and signed by Brian Michaels.
18 #PR11 Copy of a letter from Andrew D. Campbell, Sr. Assistant Attorney General,
19 Criminal Justice Division, Oregon Department of Justice, to Alex R. Gardner,
20 Lane County District Attorney dated 9/5/12.
21 #PR12 Copy of the results of the search of the license registry maintained by the
22 Oregon Real Estate Agency for John H. Brown.
23 #PR13 Copies of the results of the search of the Secretary of State's business registry
24 for Evans, Elder & Brown, Inc.
25 #PR14 Copies of the results of the search of the Secretary of State's business registry
26 for John H. Brown.
27 #PR15 Copies of the results of the search of the Secretary of State's business registry
28 for Tom Bowerman.
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- 1 #PR16 Copies of the results of the search of the Secretary of State's business registry
2 for John Alcott.
3 #PR17 Copy of the "Filing of Candidacy" for Rob Handy for the North Commissioner
4 Position filed on 1/17/12.

PREPARED BY Deborah M. Tuss 1/7/13
Deborah M. Tuss Date
Investigator

APPROVED BY Ronald A. Bersin 1/9/13
Ronald A. Bersin Date
Executive Director

REVIEWED BY Lynn Rosik 1/9/13
Lynn Rosik Date
Assistant Attorney General